

Exhibit 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PIONEER BUSINESS SERVICES, LLC, : Docket #
Plaintiff, : 1:22-cv-06206-ALC-BCM

-against- :

VISTAJET US, INC., : New York, New York
Defendant. : February 21, 2023

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PROCEEDINGS BEFORE
THE HONORABLE BARBARA C. MOSES
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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2 THE DEPUTY CLERK: The Court now calls
3 Pioneer Business Services, LLC versus VistaJet US,
4 Inc, case number 22-CV-6206.

5 Counsel, please make your appearances for
6 the record.

7 MR. HAVELES: Your Honor, Peter Haveles of
8 Akerman, LLP on behalf of plaintiff.

9 THE COURT: Good morning.

10 MR. HAVELES: Good morning, Your Honor.

11 MS. COYLE: Good morning, Your Honor. Lisa
12 Coyle, Ackerman, LLP, on behalf of plaintiff as
13 well.

14 THE COURT: Good morning. So that's Mr.
15 Haveles and Ms. Coyle for the plaintiff, and
16 counterclaim defendant.

17 And for the defendant and counterclaim
18 plaintiff.

19 MR. GUTCHESS: Good morning, Your Honor.
20 Jeff Gutchess and Joanna Niworowski for VistaJet.

21 THE COURT: And Mr. Gutchess, Ms.
22 Niworowski, good morning.

23 All right. So we're here today for a
24 discovery dispute, and also this is our slightly
25 delayed prescheduled status conference.

1 Let me begin with a little bit of a bigger
2 picture question, which is related to the discovery
3 dispute. Mr. Gutchess, the deadline for expert
4 reports, except for reports devoted solely to
5 rebutting the other side's expert, was a couple of
6 weeks ago. I understand you didn't serve one. Is
7 that right?

8 MR. GUTCHESS: Correct.

9 THE COURT: How are you going to establish
10 your damages on your counterclaim?

11 MR. GUTCHESS: Your Honor, the damages as
12 to the IP claims, the trademark and the copyright,
13 they generally go into lost profits from sales used
14 by the trademarks improperly. And in here, the
15 plaintiff, FCA, was unable to basically complete any
16 sales. So we're left in a situation where we
17 believe there's a clear infringement, but we don't
18 believe there's any significant damages to seek on
19 the trademark and copyright claims.

20 THE COURT: And that's why you don't have
21 an expert report quantifying those damages?

22 MR. GUTCHESS: Correct.

23 THE COURT: So don't you need to do
24 something about your interrogatory answer? Don't
25 you need to update it?

1 MR. GUTCHESS: We would be happy to do
2 that, Your Honor. I do think it's probably
3 appropriate to do so. And that goes to the
4 broader -- you know, the breach of contract damages
5 as well. One of the things we said in our
6 interrogatory responses was with the main form of
7 likely damages being customers that did not renew,
8 we don't really have a way of knowing why they don't
9 always renew. And so it's hard to tell whether
10 there's true damages or not, or true causation or
11 not. And that renewal period runs over a year or
12 so, and so they still could be accruing.

13 As of today, we don't really -- we haven't
14 really been able to identify any particular customer
15 that we can say, well, the nonrenewals did go up.
16 We haven't yet been able to identify any customers
17 that did not renew specifically because of FCA's
18 disclosures. And so --

19 THE COURT: So you don't have any contract
20 damages either?

21 MR. GUTCHESS: Well, we have undefined
22 damages at this point that are difficult to prove,
23 which is related to the liquidated damages clause in
24 the contract.

25 THE COURT: Okay. I think what you're

1 telling me, you're stepping up to it a little bit
2 gingerly, is that that's all you got, right, the
3 liquidated damages clause?

4 MR. GUTCHESS: Exactly. That's what it's
5 looking like, yes.

6 THE COURT: Okay.

7 MR. GUTCHESS: I don't see that changing.
8 If it were to change, if we were to learn of any
9 customer who actually we could actually establish
10 causation, we would disclose that immediately. But
11 I do not -- you know, it hasn't happened yet, so
12 it's probably unlikely to happen.

13 THE COURT: In your interrogatory answer,
14 I'm referring to your answer to interrogatory number
15 1, which was intended to be Exhibit B to your
16 opponent's letter motion at docket 97, but which
17 inadvertently, I expect, was not attached. But we
18 got it a few minutes ago, so I now have it.

19 You're going to go ahead, Mr. Haveles, if
20 you haven't done it already, and put Exhibits A and
21 B on the docket where they belong.

22 MR. HAVELES: I believe Ms. Coyle was doing
23 the e-filing just before we started the conference,
24 Your Honor. Yes.

25 THE COURT: Okay.

1 renewal and said, look, these rates are much lower
2 than your current rates. These are 12,000 versus
3 17,000. And if those customers would have --

4 THE COURT: Is that, like, per hour?

5 MR. GUTCHESS: Yes, per hour.

6 THE COURT: Oh, my gosh. I live in a
7 different universe.

8 MR. HAVELES: We all do, Your Honor.

9 MR. GUTCHESS: Crazy. But those customers,
10 to the best that we can determine, what we know --
11 well, we know they did not sign up with Pioneer, and
12 it doesn't look like they terminated their contracts
13 with VistaJet. But if they had, then that would
14 have been the damage. But as I said earlier --

15 THE COURT: Yeah, and if I had a ham
16 sandwich -- what's the difference? If I had some
17 ham, I'd have a ham sandwich, if I had some bread.

18 MR. GUTCHESS: Right. And so we've been
19 unable to establish causation at this point, Your
20 Honor.

21 THE COURT: Okay. So that goes for your so
22 called additional or direct damages for breach of
23 contract. And by the same token, your copyright and
24 trademark damages you can't substantiate, right,
25 because they would follow the same model?

1 MR. GUTCHESS: Yeah. We've asked their
2 executives about the business, if they tried to
3 establish -- and, you know, it hasn't taken off.
4 And I don't think it's worth going after any damages
5 on that. So we're left in a situation where we
6 probably can establish liability, but not damages.
7 Whether there's nominal damages or statutory
8 damages, I think that's even questionable. Ms.
9 Niworowski is our expert on that.

10 THE COURT: So let me make a suggestion
11 here. It would have been extremely helpful for you
12 to have told this to opposing counsel during the
13 meet and confer process. Is there some reason why
14 we're all just learning about this today?

15 MR. GUTCHESS: I believe I've -- you know,
16 don't have a strong recollection of everything we've
17 discussed, but I believe Mr. Haveles and I have
18 discussed this during that process. And even after
19 the last hearing, when we were together in your
20 courtroom, I mentioned to him upfront that we were
21 not going to have an expert witness because I
22 thought that might be on the damages on the IP
23 stuff, because I thought that might be helpful to
24 them to know. So I have been communicating this.

25 MR. HAVELES: Your Honor, I will say